



# Localism Act 2011

## 2011 CHAPTER 20

### PART 7

#### HOUSING

#### CHAPTER 1

##### ALLOCATION AND HOMELESSNESS

##### *Allocation*

#### **145 Allocation of housing accommodation**

(1) Section 159 of the Housing Act 1996 (allocation of housing accommodation) is amended as follows.

(2) After subsection (4) insert—

“(4A) Subject to subsection (4B), the provisions of this Part do not apply to an allocation of housing accommodation by a local housing authority in England to a person who is already—

- (a) a secure or introductory tenant, or
- (b) an assured tenant of housing accommodation held by a private registered provider of social housing or a registered social landlord.

(4B) The provisions of this Part apply to an allocation of housing accommodation by a local housing authority in England to a person who falls within subsection (4A)(a) or (b) if—

- (a) the allocation involves a transfer of housing accommodation for that person,
- (b) the application for the transfer is made by that person, and
- (c) the authority is satisfied that the person is to be given reasonable preference under section 166A(3).”

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- (3) In subsection (5) after “accommodation” (in the first place it occurs) insert “by a local housing authority in Wales”.

**146 Allocation only to eligible and qualifying persons: England**

- (1) In the Housing Act 1996 before section 160A insert—

**“160ZA Allocation only to eligible and qualifying persons: England**

- (1) A local housing authority in England shall not allocate housing accommodation—
- (a) to a person from abroad who is ineligible for an allocation of housing accommodation by virtue of subsection (2) or (4), or
  - (b) to two or more persons jointly if any of them is a person mentioned in paragraph (a).
- (2) A person subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is ineligible for an allocation of housing accommodation by a local housing authority in England unless he is of a class prescribed by regulations made by the Secretary of State.
- (3) No person who is excluded from entitlement to housing benefit by section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) shall be included in any class prescribed under subsection (2).
- (4) The Secretary of State may by regulations prescribe other classes of persons from abroad who are ineligible to be allocated housing accommodation by local housing authorities in England.
- (5) Nothing in subsection (2) or (4) affects the eligibility of a person who falls within section 159(4B).
- (6) Except as provided by subsection (1), a person may be allocated housing accommodation by a local housing authority in England (whether on his application or otherwise) if that person—
- (a) is a qualifying person within the meaning of subsection (7), or
  - (b) is one of two or more persons who apply for accommodation jointly, and one or more of the other persons is a qualifying person within the meaning of subsection (7).
- (7) Subject to subsections (2) and (4) and any regulations under subsection (8), a local housing authority may decide what classes of persons are, or are not, qualifying persons.
- (8) The Secretary of State may by regulations—
- (a) prescribe classes of persons who are, or are not, to be treated as qualifying persons by local housing authorities in England, and
  - (b) prescribe criteria that may not be used by local housing authorities in England in deciding what classes of persons are not qualifying persons.
- (9) If a local housing authority in England decide that an applicant for housing accommodation—

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- (a) is ineligible for an allocation by them by virtue of subsection (2) or (4), or
  - (b) is not a qualifying person,they shall notify the applicant of their decision and the grounds for it.
- (10) That notice shall be given in writing and, if not received by the applicant, shall be treated as having been given if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.
- (11) A person who is not being treated as a qualifying person may (if he considers that he should be treated as a qualifying person) make a fresh application to the authority for an allocation of housing accommodation by them."
- (2) Section 160A (allocation only to eligible persons) is amended as follows—
  - (a) in the heading after "persons" insert ": Wales",
  - (b) in subsection (1) after "authority" insert "in Wales",
  - (c) in subsection (2) after "authority" insert "in Wales",
  - (d) in subsection (3) after "authority" insert "in Wales",
  - (e) in subsection (5)—
    - (i) after "authorities" insert "in Wales",
    - (ii) after "authority" insert "in Wales",
  - (f) in subsection (6) after "authority" insert "in Wales",
  - (g) in subsection (7) after "authority" insert "in Wales",
  - (h) in subsection (9) after "authority" insert "in Wales", and
  - (i) in subsection (11) after "authority" insert "in Wales".

## **147 Allocation schemes**

- (1) The Housing Act 1996 is amended as follows.
- (2) In section 166 (applications for housing accommodation)—
  - (a) after subsection (1) insert—

“(1A) A local housing authority in England shall secure that an applicant for an allocation of housing accommodation is informed that he has the rights mentioned in section 166A(9).”, and”
  - (b) in subsection (2) after "authority" insert "in Wales".
- (3) For the heading before section 167 substitute "Allocation schemes".
- (4) Before section 167 insert—

### **“166A Allocation in accordance with allocation scheme: England**

- (1) Every local housing authority in England must have a scheme (their "allocation scheme") for determining priorities, and as to the procedure to be followed, in allocating housing accommodation.

For this purpose "procedure" includes all aspects of the allocation process, including the persons or descriptions of persons by whom decisions are taken.
- (2) The scheme must include a statement of the authority's policy on offering people who are to be allocated housing accommodation—

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- (a) a choice of housing accommodation; or
  - (b) the opportunity to express preferences about the housing accommodation to be allocated to them.
- (3) As regards priorities, the scheme shall, subject to subsection (4), be framed so as to secure that reasonable preference is given to—
- (a) people who are homeless (within the meaning of Part 7);
  - (b) people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);
  - (c) people occupying insanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions;
  - (d) people who need to move on medical or welfare grounds (including any grounds relating to a disability); and
  - (e) people who need to move to a particular locality in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others).

The scheme may also be framed so as to give additional preference to particular descriptions of people within this subsection (being descriptions of people with urgent housing needs).

- (4) People are to be disregarded for the purposes of subsection (3) if they would not have fallen within paragraph (a) or (b) of that subsection without the local housing authority having had regard to a restricted person (within the meaning of Part 7).
- (5) The scheme may contain provision for determining priorities in allocating housing accommodation to people within subsection (3); and the factors which the scheme may allow to be taken into account include—
- (a) the financial resources available to a person to meet his housing costs;
  - (b) any behaviour of a person (or of a member of his household) which affects his suitability to be a tenant;
  - (c) any local connection (within the meaning of section 199) which exists between a person and the authority's district.
- (6) Subject to subsection (3), the scheme may contain provision about the allocation of particular housing accommodation—
- (a) to a person who makes a specific application for that accommodation;
  - (b) to persons of a particular description (whether or not they are within subsection (3)).
- (7) The Secretary of State may by regulations—
- (a) specify further descriptions of people to whom preference is to be given as mentioned in subsection (3), or
  - (b) amend or repeal any part of subsection (3).
- (8) The Secretary of State may by regulations specify factors which a local housing authority in England must not take into account in allocating housing accommodation.
- (9) The scheme must be framed so as to secure that an applicant for an allocation of housing accommodation—

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- (a) has the right to request such general information as will enable him to assess—
    - (i) how his application is likely to be treated under the scheme (including in particular whether he is likely to be regarded as a member of a group of people who are to be given preference by virtue of subsection (3)); and
    - (ii) whether housing accommodation appropriate to his needs is likely to be made available to him and, if so, how long it is likely to be before such accommodation becomes available for allocation to him;
  - (b) has the right to request the authority to inform him of any decision about the facts of his case which is likely to be, or has been, taken into account in considering whether to allocate housing accommodation to him; and
  - (c) has the right to request a review of a decision mentioned in paragraph (b), or in section 160ZA(9), and to be informed of the decision on the review and the grounds for it.
- (10) As regards the procedure to be followed, the scheme must be framed in accordance with such principles as the Secretary of State may prescribe by regulations.
- (11) Subject to the above provisions, and to any regulations made under them, the authority may decide on what principles the scheme is to be framed.
- (12) A local housing authority in England must, in preparing or modifying their allocation scheme, have regard to—
  - (a) their current homelessness strategy under section 1 of the Homelessness Act 2002,
  - (b) their current tenancy strategy under section 150 of the Localism Act 2011, and
  - (c) in the case of an authority that is a London borough council, the London housing strategy.
- (13) Before adopting an allocation scheme, or making an alteration to their scheme reflecting a major change of policy, a local housing authority in England must—
  - (a) send a copy of the draft scheme, or proposed alteration, to every private registered provider of social housing and registered social landlord with which they have nomination arrangements (see section 159(4)), and
  - (b) afford those persons a reasonable opportunity to comment on the proposals.
- (14) A local housing authority in England shall not allocate housing accommodation except in accordance with their allocation scheme.”
- (5) Section 167 (allocation in accordance with allocation scheme) is amended as follows—
  - (a) in the heading after “scheme” insert “: Wales”,
  - (b) in subsection (1) after “authority” insert “in Wales”,
  - (c) in subsection (4) after “authority” insert “in Wales”,

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- (d) in subsection (7) after “authority” insert “in Wales”, and
  - (e) in subsection (8) after “authority” insert “in Wales”.
- (6) In section 172(2) (regulations) before “167(3)” insert “166A(7) or”.
- (7) In section 174 (index of defined expressions: Part VI) in the entry for “allocation scheme” before “167” insert “166A and”.

### *Homelessness*

#### **148 Duties to homeless persons**

- (1) Section 193 of the Housing Act 1996 (duty to persons with priority need who are not homeless intentionally) is amended as follows.
- (2) Omit subsection (3A).
- (3) For subsection (5) substitute—
- “(5) The local housing authority shall cease to be subject to the duty under this section if—
- (a) the applicant, having been informed by the authority of the possible consequence of refusal or acceptance and of the right to request a review of the suitability of the accommodation, refuses an offer of accommodation which the authority are satisfied is suitable for the applicant,
  - (b) that offer of accommodation is not an offer of accommodation under Part 6 or a private rented sector offer, and
  - (c) the authority notify the applicant that they regard themselves as ceasing to be subject to the duty under this section.”
- (4) In subsection (7) after “refusal” insert “or acceptance”.
- (5) In subsection (7AA)—
- (a) omit “In a restricted case”,
  - (b) after “informed” insert “in writing”, and
  - (c) in paragraph (a) for “private accommodation offer” substitute “private rented sector offer”.
- (6) In subsection (7AB)—
- (a) in paragraph (a) after “refusal” insert “or acceptance”, and
  - (b) at the end of paragraph (b) insert “, and
  - (c) in a case which is not a restricted case, the effect under section 195A of a further application to a local housing authority within two years of acceptance of the offer.”
- (7) In subsection (7AC) for “private accommodation offer” substitute “private rented sector offer”.
- (8) Omit subsections (7B) to (7E).
- (9) In subsection (7F)—
- (a) at the end of paragraph (a) insert “or”,

- (b) in paragraph (ab) for “private accommodation offer” substitute “private rented sector offer”,
- (c) omit paragraph (b), and
- (d) in the words following that paragraph for “it is reasonable for him to accept the offer” substitute “subsection (8) does not apply to the applicant.”

(10) For subsection (8) substitute—

- “(8) This subsection applies to an applicant if—
- (a) the applicant is under contractual or other obligations in respect of the applicant’s existing accommodation, and
  - (b) the applicant is not able to bring those obligations to an end before being required to take up the offer.”

(11) After subsection (9) insert—

“(10) The appropriate authority may provide by regulations that subsection (7AC) (c) is to have effect as if it referred to a period of the length specified in the regulations.

- (11) Regulations under subsection (10)—
- (a) may not specify a period of less than 12 months, and
  - (b) may not apply to restricted cases.

- (12) In subsection (10) “the appropriate authority”—
- (a) in relation to local housing authorities in England, means the Secretary of State;
  - (b) in relation to local housing authorities in Wales, means the Welsh Ministers.”

## **149 Duties to homeless persons: further amendments**

(1) The Housing Act 1996 is amended as follows.

(2) In section 188 after subsection (1) insert—

“(1A) But if the local housing authority have reason to believe that the duty under section 193(2) may apply in relation to an applicant in the circumstances referred to in section 195A(1), they shall secure that accommodation is available for the applicant’s occupation pending a decision of the kind referred to in subsection (1) regardless of whether the applicant has a priority need.”

(3) In section 195—

- (a) omit subsection (3A), and
- (b) in subsection (4B) for “(3A) to” substitute “(4) and”.

(4) After section 195 insert—

### **“195A Re-application after private rented sector offer**

- (1) If within two years beginning with the date on which an applicant accepts an offer under section 193(7AA) (private rented sector offer), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority—

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- (a) is satisfied that the applicant is homeless and eligible for assistance, and
  - (b) is not satisfied that the applicant became homeless intentionally,
- the duty under section 193(2) applies regardless of whether the applicant has a priority need.
- (2) For the purpose of subsection (1), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) has been given is to be treated as homeless from the date on which that notice expires.
- (3) If within two years beginning with the date on which an applicant accepts an offer under section 193(7AA), the applicant re-applies for accommodation, or for assistance in obtaining accommodation, and the local housing authority—
- (a) is satisfied that the applicant is threatened with homelessness and eligible for assistance, and
  - (b) is not satisfied that the applicant became threatened with homelessness intentionally,
- the duty under section 195(2) applies regardless of whether the applicant has a priority need.
- (4) For the purpose of subsection (3), an applicant in respect of whom a valid notice under section 21 of the Housing Act 1988 has been given is to be treated as threatened with homelessness from the date on which that notice is given.
- (5) Subsection (1) or (3) does not apply to a case where the local housing authority would not be satisfied as mentioned in that subsection without having regard to a restricted person.
- (6) Subsection (1) or (3) does not apply to a re-application by an applicant for accommodation, or for assistance in obtaining accommodation, if the immediately preceding application made by that applicant was one to which subsection (1) or (3) applied.”
- (5) Section 198 (referral to another local housing authority) is amended as follows.
- (6) After subsection (2) insert—
- “(2ZA) The conditions for referral of the case to another authority are also met if—
- (a) the application is made within the period of two years beginning with the date on which the applicant accepted an offer from the other authority under section 193(7AA) (private rented sector offer), and
  - (b) neither the applicant nor any person who might reasonably be expected to reside with the applicant will run the risk of domestic violence in the district of the other authority.”
- (7) In subsection (2A) after “(2)” insert “or (2ZA)”.
- (8) In subsection (3) after “(2)” insert “, (2ZA)”.
- (9) In section 202(1)(g) (right to request review of decision) for “private accommodation offer” substitute “private rented sector offer”.